PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

STAFF REPORT NO. 9

APPROACHES TO LEGISLATIVE INVOLVEMENT IN COLLECTIVE BARGAINING IN OTHER STATES

Objective: To provide information for the Personnel and Labor Relations Study Question on Study Questions 8, 9 and 10.

8. What should be the respective roles of the executive branch and legislative branch in collective bargaining? How much control should each exercise?

9. Should any control the Legislature might have be confined to economic issues?

10. Do two sets of negotiations - one for economic contract items, one for non-economic items, limit the ability of parties to bargain effectively?

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I. INTRODUCTION

This paper reports the results of a survey of selected states' experiences regarding study questions 8, 9, and 10. (Appendix I contains a description of study methodology, other sources consulted, and costs of the study). States selected for the survey have had experiences with the issues in the study questions, and representatives from labor, management and legislatures were contacted for summaries and evaluations of their practices.

In general, the study shows that the issues are inherently political in spite of many attempts to make bargaining a clean administrative process or reflect more closely private sector bargaining relations. No evidence was found that pointed to permenant structural solutions to problems with the political framework of bargaining, although successful reforms are possible.

The evidence suggests that a bargaining process satisfactory to all parties depends most of all upon the expectations of the participants. This helps to explain why there are successes and failures with nearly every conceivable structure. Clarity of roles and expectations is the major factor behind good public policy concerning the political framework of bargaining.

The remainder of the paper is divided into sections corresponding to the study questions, and a general conclusion added in section V.

II. QUESTION 8: WHAT SHOULD BE THE RESPECTIVE ROLES OF THE EXECUTIVE BRANCH AND LEGISLATIVE BRANCH? HOW MUCH CONTROL SHOULD THE LEGISLATURE HAVE OVER NEGOTIATED AGREEMENTS--NO CONTROL? SOME CONTROL? COMPLETE CONTROL?

The experiences of the states polled can be categorized along a continuum from total legislative control over economic elements of agreements to virtually no legislative control. The categories are:

1. Complete Legislative Control of Economic Items. Washington and Wisconsin have had experiences under this arrangement where the legislature prohibits bargaining on economic items and decides such issues for itself. In both cases, unions referred to the arrangement as a form of "collective begging" or similar epithet denoting inequality. Unions instead engaged in direct political lobbying concerning economic issues. The legislature in Wisconsin was dissatisfied with the process and changed to full bargaining. The situation still exists in Washington and no one reported serious efforts to overturn it, although unions do want to bargain fully.

The main result of this arrangement seems to be that unions concentrate all of their bargaining efforts at working conditions, which in turn leads to a greater sharing of traditional management rights. Washington has the most widespread participation by employees and unions in the authority to manage programs of any state in the union. Wisconsin was going in the same direction at the time the arrangement was changed. In each case managers felt that there is less discretion available to them,

but indicated that such was the political arrangement and they were willing to work with it.

This option thus entails a tradeoff between direct legislative control of economic items, accompanied by effective lobbying in these two cases, and substantial concessions of traditionally management rights in the management of programs. One state decided it could continue under these conditions, one decided it could not.

2. Legislative Role in Bargaining Strategy and Ratification. Wisconsin's current arrangements fall into this category. They have a Joint Committee on Employment Relations (JCER, known as the "Joker"), made up of the leadership of both houses of the legislature, which is consulted by management representatives prior to making a substantial offer at the bargaining table. (i.e., "no major concessions should be made in the retirement areas", or "come back to us before you go over 7%".) The JCER also ratifies the agreements after union approval and forwards them for consideration by the full legislature. The JCER gets positive marks from everyone polled, although unions noted some disadvantages.

The disadvantages cited by the union are that (a) the legislature seems to want to avoid or insulate themselves from the bargaining process, but still have the authority to control executive bargainers. The union feels it can make an agreement in good faith, have it approved by the legislative leadership, and then have the agreement overturned by the full legislature. This has happened once (in 1977) and the union spokesperson blamed the problem on poor communications between the executive and the committee. So while there is this potential for breakdown, it is desirable to have the leadership of the legislature assembled and fully briefed on bargaining progress; (b) since bargaining is usually underway the same time the legislature meets, the JCER gets involved in strategy sessions but does not actively participate at the bargaining table. Again, this is a disadvantage balanced by the overall assessment that the arrangement has "worked well."

As an aside, the bargaining under the JCER arrangement has occurred under two appropriations procedures. Four years ago the legislature still appropriated money for bargained agreements under a "sum sufficient", which means that if all parties sign off on an agreement enough money would be taken out of the general fund to pay for it. This obviously required an unspecified cushion in the budget to draw upon, and the practice has since been abandoned. All the parties polled indicated that the reason for the change was not due to the high cost of agreements, but rather to the advent of tight budgets. The legislature simply wanted to have a more precise estimate of costs. Now the governor recommends, and the legislature approves, a pot for pay plan increases while the negotiating process is still underway. (called a "modified sum certain") Dollars are apportioned out to the agencies once all agreements are made.

3. Legislative Commission Review, Occasionally Affecting Bargaining.

Minnesota operates under this procedure, distinguished from Wisconsin because the legislative commission does not formally involve itself in bargaining strategy. The commission is made up of ten legislators, a joint

bipartisan group of the leadership. There are two layers of review for negotiated agreements: (1) the Legislative Commission on Employee Relations (LCER, known as the "lecher") reviews agreements and forwards them to the legislature. If the legislature is not in session at the conclusion of bargaining, the LCER has the authority to temporarily approve agreements until the legislature meets again. (2) the legislature reviews the agreements and is expected to usually approve the actions of the LCER in a one line provision. In addition, the LCER can do some "headbeating" if bargaining breaks down, and is given the charge to bring the bargaining parties before the the Commission to attempt to clear up differences.

The LCER arrangement is a response to the previous situation where the full legislature and its committee system reviewed and often modified negotiated agreements. This proved to be a political headache, since modifications tended to affect only the economic parts of agreements which are a reflection of concessions on both sides in other areas of agreement. The unions generally like the current arrangement, since it allows the key legislative leadership to serve as a buffer between negotiating parties and to minimize the possibility of an individual legislator "nitpicking" and upsetting a carefully worked out agreement. Of course, success depends upon the overall bargaining relationships and the willingness of all parties to fully play but not overstep their roles. The situation is full of promise, but since it was passed in 1979, the current round of bargaining is the first under the new arrangement. Results of bargaining should be in before the end of March.

4. Legislative Final Approval Of Contracts, No Prior Organized Contact With Bargaining Parties. Alaska and Oregon fall into this category (the latter on economic terms only), but they have remarkably different experiences. Alaska has to be one of the very few states where labor is truly the dominant political force. As might be expected, this arrangement encourages union lobbying in addition to bargaining. Agreements are negotiated by the Governor's Commissioner of Administration, signed by him, ratified by the union; then it goes to the legislature for approval. As both sides acknowledge, the union is very effective at all stages. The union is also effective at applying pressure on the Governor, who may then direct the Commissioner of Administration to change bargaining strategy, referred to as a "back door" arrangement.

Oregon fares quite differently under this system. The parties bargain to final legislative approval (of both the compensation plan and the level of funding) and both sides report that the legislature stays out until that stage. The legislature seems reluctant to get involved more than the executive asks them to because they recognize the importance of respecting the delegated authority arrangements and their impacts upon bargaining. The legislature formally reviews the agreements in its Ways and Means Committee, and if bargaining does not meet the legislature's adjournment deadline, a fund is established to be drawn upon as contracts are completed. The Ways and Means Committee also serves as an interim emergency board for cases where classification changes entail a change in the pay plan.

All parties approve of the arrangements in Oregon (an improvement over the old system, described under question 10) probably because (a) bargaining and political relationships are clear, and generally adhered to by the participants; and (b) negotiated agreements have so far all been approved under the system.

5. Ratification of Agreements Is Delegated, Legislative Modifications Require Exceptional Provisions. Michigan is perhaps unique in placing the authority to review and approve negotiated agreements in an independent, constitutionally established commission. The commission, called by one respondant the "fourth branch of government", is made up of appointed lay people in normal commission fashion and receives a guaranteed percentage of salaries and wages to cover operating costs. The commission reviews the products of bargaining between unions and the state's Office of the State Employer (OSE) though an employee relations committee; this 3-person group makes recommendations to the full commission. The commission has full authority to regulate collective bargaining, including the amount of agreements, and the legislature can override their actions only by a 2/3 vote of both houses.

The system is described as "livable" by the parties polled, although there have been problems. Legislative discretion is cut down, and several attempts by the legislature to pass laws affecting state employees have been successfully challenged in court by the commission. One officer of the legislature refers to the constitutional provision as a matter of political taste: one must judge how democratic a process should be, how political a process should be. The commission is the strongest attempt of perhaps any state to remove politics from the bargaining relationship. The legislature has not complained about the size of negotiated agreements, perhaps due to the desparate financial situation in Michigan. This year the approved salary increase is about 5%, and ten thousand state employees have recently been laid off. The commission apparently shares the same assessment of the situation as the legislature does.

The union consulted likes the arrangement because of the stability of bargaining roles, but major problems exist in other areas (described under question 10). These issues do not directly relate to the commission structure.

6. Lump Sum Appropriation That Does Not Distinguish Negotiated Agreements. Still another way of delegating legislative control over negotiated agreements is to have the legislature appropriate money for the executive in a lump sum, then let the governor worry about divisions of money among programs and salary increases. Pennsylvania does this, excluding executive authority to negotiate only on pensions.

Readers familiar with the Pennsylvania state legislature may recognize their trademark of reluctance to assume direct responsibility for such issues. The political decisions about allocations are in the governor's hands. Due to the strong unions in Pennsylvania, this has recently meant adequate salary increases and massive layoffs and cuts to programs. At one time the legislature agreed to set up a committee on employee relations with the executive, largely at the behest of the unions, which would have

involved them in the negotiations. However, the legislative leadership never sent a representative to any of the meetings.

In spite of these problems, the union does not find the system intolerable. Due to their successes in lobbying the legislature and the executive, they have experienced a "minimum amount of trouble", and relations with individual legislators are "regular and effective". The problems this renders for the executive branch is obvious; they are caught in the middle and bear most of the political heat for the cutbacks.

SUMMARY

There is a wide variety of arrangements now in practice, each with positive and negative points. Most of the arrangements are corrective measures, aimed at clearing up earlier problems, but the same reform may not work in two states (compare the committees in Wisconsin and Pennsylvania).

Overall, success in bargaining depends upon clear roles and responsibilities for all parties. This is the main reason reforms are carried out, and helps to explain why no one structure is best. For instance, if a legislature dislikes being presented with negotiated agreements it cannot amend, it may (a) establish a committee that takes part in bargaining strategy and still retain ratification; (b) establish a committee that will give responsibility to key legislative leaders to examine agreements, and act as a mediator for some disputes; (c) help to constitutionally establish a commission which will take responsibility, and retain exceptional override provisions; or (d) ignore the problem and muddle through. Many things can work, but the key is to define the problems carefully and then make an understandable process that people are willing to adhere to.

It should be noted that good bargaining relations depend upon the political culture of a state. The legislatures in Pennsylvania and Wisconsin are remarkably different, for instance, in their willingness to establish and adhere to procedures that will regularize bargaining relationships. Comparative union strength in Alaska, Oregon and Michigan shows differences in the kinds of tactics that are workable. The will to make acceptable bargaining relations is not simply a matter of structuring roles; the political will to adhere to them requires special attention and frank discussion.

III. QUESTION 9: SHOULD ANY CONTROL THE LEGISLATURE MIGHT HAVE BE CONFINED TO ECONOMIC ISSUES OR SHOULD IT INCLUDE NON-ECONOMIC CONTRACT ITEMS?

Looking at those states that confine such control to economic items, we have the following:

1. Total Legislative Control of Economic Issues. Wisconsin used to have such an arrangement, and Washington currently does. As mentioned before, the separation of economic and non-economic issues for legislative control invites more active political lobbying on economic items and

more intensive bargaining on non-economic items. Unions are generally dissatisfied with the arrangement, as it is not full bargaining equality as found in the private sector, but have found some satisfaction where lobbying efforts are successful. Legislatures vary in their assessments based upon how they react to the intense lobbying the structure encourages. Managers have reservations on the discretion given up under non-economic items. There are problems with any system, although attention to the differences may enable a state to pick the types of problems it wants.

2. Final Ratification of Economic Issues. States with this arrangement (Oregon is the purest example) differ in their experiences. Oregon has not had an agreement overturned under the arrangement, and most parties are accordingly satisfied. Minnesota's review of agreements (through the LCER and the legislature) is statutorily over the economic items, but in practice attention is paid to the entire agreement. It seems that the experiences of the states says that this can work well if the parties agree to follow the structure in their states.

SUMMARY

In general, the reforms in the area of question number 9 are matters of a tradeoff between one class of problems and another. Politics inevitably are a part of the overall structure, and where parties are denied the bargaining route they will follow the political. Whether one route is more volatile than the other depends upon the expectations of participants and the structure of political power in that state.

IV. QUESTION 10: DO TWO SETS OF NEGOTIATIONS--ONE FOR ECONOMIC ITEMS, ONE FOR NON-ECONOMIC CONTRACT ITEMS LIMIT THE ABILITY OF NEGOTIATING PARTIES TO BARGAIN EFFECTIVELY, I.E. BARGAIN ECONOMIC BENEFITS FOR NON-ECONOMIC BENEFITS AND VICE VERSA? IS THE CURRENT SPLIT IN NEGOTIATIONS GOOD PUBLIC POLICY? IS IT THE MOST ECONOMICAL ARRANGEMENT?

Three of the states polled do have two sets of negotiations. They are:

1. Oregon Prior to 1979. Oregon used to have a situation similar to the current one in Montana, except that no collective negotiations were practiced. In 1979 all sides consented to a change to fewer bargaining units, and one set of negotiations. Respondants reported all favorable comments on the change due to the more manageable structure that facilitates clear discussion.

2. Minnesota. As mentioned before, Minnesota technically separates economic and non-economic bargaining terms, but it has not worked that way in practice. This is a function of the expectations of the people involved in the collective bargaining process who apparently pay serious attention to the need for good working relations as a prerequisite for adequate or acceptable bargaining.

3. Michigan. Michigan's two sets of negotiations are compounded by a statutory requirement to negotiate economic agreements every year while permitting multi-year non-economic agreements. The unions consider such scheduling problems a "nightmare" and the Office of the State Employer agrees it is an important problem.

4. Other Considerations. Although they do not fit the question precisely, the experiences of Washington and Wisconsin under their former arrangement can be considered an analogy to this issue. There the separation of economic from non-economic items in bargaining led to a distinct political tradeoff of one type of problem for another. Combined with the earlier cases, this suggests that the separation does not represent a "clean" bargaining arrangement and that tradeoffs between economic and non-economic items may be difficult to achieve.

In general, the existence of two sets of negotiations adds complexity to the bargaining framework that has been dealt with by combination of the negotiations, ignoring the separation in practice, and simply coping with the problem with difficulty. To specifically address the question of whether such separation limits the abilities of parties to negotiate effectively, these responses show that the separation is a difficulty that in two of three instances is addressed by combining the issues. In these two cases the parties felt it led to a more reasonsable bargaining situation.

The remainder of question 10 concerns two crucial judgments: (1) Is the current separation good public policy? (2) Is it economical?

In regards to good public policy, we need criteria for evaluation. I will use the following:

1. Do the negotiating parties function well under the system? A major conclusion of this study is that the expectations and attitudes to define and adhere to roles is the most important criterion for good bargaining policy. If the parties affected consider the separation to be an added point of contention, the question needs to be asked: Is such a source of contention desirable? The important judgment must be made by those using the system, not by an outside researcher.

2. Is the arrangement economical, in the general sense? That is, is the system reasonable in terms of the headaches and accompanying costs of bargaining? Our earlier discussion of the problem of too many bargaining units is instructive here, and suggests that in general the negotiating parties agree that simplification fits their own purposes.

3. Is the arrangement economical in the monetary sense? The opinion of most polled is that the size of agreements is not really affected by the existence of two sets of negotiations, although it may affect the types of non-economic agreements. Please note that this evidence does

not speak directly to the criterion. Hard data on the cost of agreements is difficult to come by, and the information others have collected suggests other factors play the major roles in determining costs. Whether the two sets of negotiations affect the costs of Montana negotiations is the subject of an expensive study, one likely to find minute statistically significant differences that pale in the face of more easily understood political forces.

V. OVERALL CONCLUSIONS

Collective bargaining in the public sector is inherently a political process. Although most public bargaining arrangements are patterned on the private sector model, the primary motives for executive and legislative decision-making are political. Moreover, the sources of revenue, the effects of strikes, legal consequences of actions affecting employees, general policy responsibilities, specific management responsibilities, and several other factors make public sector bargaining different from that of the private sector. Attempts to ignore or forget politics ask for trouble.

Concerned parties in most states are interested in tinkering with the structure of bargaining and ratification to solve their particular problems. Such tinkering makes sense only in specific cases where it may be agreed upon as an acceptable framework for bargaining and addresses particular bargaining problems. The main criterion for addressing such problems suggested in this study is the ability of affected parties to collectively define and follow clear roles and expectations for bargaining.

While little if any research has been done before on the roles between legislatures and executives concerning collective bargaining agreements, much has been done on general factors that affect the quality of bargaining. For the most part they are consistent with the findings presented here. For example:

*In bargaining situations where the parties see only win/lose situations, (where each gain by one side is a loss to the other) we should expect more unilateral actions by executives and legislatures which lead to further deterioration of bargaining relations.
*Where the quality of management is believed to be poor (management by crisis, no careful attention payed to ongoing employer/employee relations, little attention to program effectiveness) we will see more perceptions of win/lose situations.
*Mutual trust and good communications are crucial to effective bargaining, particularly in periods of economic adversity where there is increased political pressure to tie bargaining and budget-making together.

These and similar findings suggest that a wide view of collective bargaining is required, one that sees bargaining as one aspect of the conduct of government. Governments will face hard times in the 1980's, and the long term problems will not be settled solely at the bargaining table. They will be solved, if at all, away from the bargaining table by the willingness of affected parties to work together. Bargaining will follow that direction, not set it.

APPENDIX I

The following steps were taken to conduct this study:

1. The problem was defined in the list of study questions in the Personnel and Labor Relations Study Commission schedule.

2. A survey of available literature was conducted to see if earlier research was helpful. Among the sources consulted were:
   *labor law journals available in the University of Montana Law Library
   *personnel journals and texts available in the University of Montana Library and in my personal library. (Among the sources that may be useful for people pursuing the general conclusions in the paper are Hugh D. Jascourt, GOVERNMENT LABOR RELATIONS (Moore); Donald Klingner, PERSONNEL MANAGEMENT (Prentice-Hall); Richard Adelman, THE PROCEEDINGS OF NEW YORK UNIVERSITY THIRTY-THIRD ANNUAL NATIONAL CONFERENCE ON LABOR (see also earlier years), (Matthew Bender, Publisher).)
   *National Conference of State Legislatures and similar organizations which compile research in the area.
   I was able to find nothing that specifically spoke to the study questions, although much pertained to general interpretations.
   The survey enabled me to come up with the appropriate list of states to poll, based on reports and summaries of practices in the 50 states.

3. The selected states' legal codes were consulted in the University of Montana Law Library (which contains the updated codes of all 50 states) to ascertain the precise arrangements in the constitutions and statutes. This was primarily done to avoid wasting phone time on basic material. Phone calls could then ask about specific practices and evaluations by parties polled.

4. Names and phone numbers from labor, management and legislative constituencies were obtained from a number of sources, including phone books, personal contacts, and discussion with experts in the field.

5. The list of persons was called, averaging about 20 minutes per conversation. Total costs of phone call is approximately $175, but an exact accounting must wait for my phone bill.

Total hours spent on the study exceeded the estimated 27 hours.

Total cost of project: $500.